

cases. His record on the whole compares favorably to Judge Benton's. According to testimony at Attorney General Ashcroft's confirmation hearing, Judge White voted to affirm the death penalty in 69 percent of the cases he heard. Looking just at the opinions Judge Benton has authored, we see him writing to affirm the death penalty 58 percent of the time. If we factor in cases in which he did not write the opinion but voted to affirm a capital sentence, I am sure the percentage is higher, and approaches Judge White's record.

For opposing a capital sentence in dissent in a small minority of the cases he heard, Judge White was vilified. Then-Senator Ashcroft took to the Senate floor and pointed to Judge White's record in death penalty cases as evidence that he was "pro-criminal," further describing Ronnie White as a judge, "with a tremendous bent toward criminal activity or with a bent toward excusing or providing second chances or opportunities for those who have been accused in those situations." These were outrageous things to say about a man who had devoted his life to the law, who had served many years on the State's highest court, and who had voted to reverse a small number of death sentences in order to preserve the integrity of the Constitution. When Judge White came to testify at Attorney General Ashcroft's confirmation hearing, Senator SPECTER offered him an apology for the way in which he was treated.

I mention all of this, as I said, because it provides such a stark contrast to the treatment that Judge Benton has gotten throughout his confirmation process. I doubt anyone will look at the nine cases in which he wrote to reverse a death penalty—50 percent more cases than those Judge White voted to reverse—and accuse him of being "pro-criminal". I will be surprised if, because he has found reversible error in the imposition of nine different death sentences, each one involving terrible crimes and horrific facts, any Member of this Senate will accuse him of having a "tremendous bent toward criminal activity." I will be shocked if, because he exercised his best judgment and followed the law as he understood it, he will be vilified and humiliated in a sneak attack in the manner that Judge Ronnie White was treated.

Of course, none of that should happen to Judge Benton, just as none of that should have happened to Judge White. I hope that one day Judge White's name can come back before the Senate and that he can be treated with the integrity and respect he deserves, just as we treat Judge Benton. I will vote in favor of Judge Benton's confirmation.

The PRESIDING OFFICER. The question is, Shall the Senate advise and consent to the nomination of William Duane Benton, of Missouri, to be United States Circuit Judge for the Eighth Circuit?

The nomination was confirmed.

NOMINATION OF DORA L. IRIZARRY TO BE UNITED STATES DISTRICT JUDGE

NOMINATION OF GEORGE P. SCHIAVELLI TO BE UNITED STATES DISTRICT JUDGE

NOMINATION OF ROBERT BRYAN HARWELL TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. The clerk will state the next set of nominations, en bloc.

The legislative clerk read the nominations of Dora L. Irizarry, of New York, to be United States District Judge for the Eastern District of New York;

George P. Schiavelli, of California, to be United States District Judge for the Central District of California;

Robert Bryan Harwell, of South Carolina, to be United States District Judge for the District of South Carolina.

Mr. HATCH. Mr. President, I rise today to express my support for the confirmation of Dora Irizarry, who has been nominated to the U.S. District Court for the Eastern District of New York.

Judge Irizarry has an impressive record of academic achievement and public service. She is a cum laude graduate of Yale University and a graduate of Columbia University School of Law. She has spent the great bulk of her career in public service, including 16 years as an assistant district attorney prosecuting complex narcotics cases. In 1995, then-Mayor Rudolph Giuliani appointed her to the New York City Criminal Court. Two years later, she was elevated by Governor George Pataki to the New York Court of Claims, where she served as an acting justice on the New York Supreme Court. After seven years of service as a judge, she left the bench in 2002 to campaign as the Republican candidate for State Attorney General. She is currently in private practice with the New York law firm of Hogue Newman & Regal.

In acknowledging the questions that some of my colleagues have about Judge Irizarry, let me just say I have done my best to ensure her nomination is treated with fairness and respect, and I believe we've succeeded. During the confirmation hearing for Judge Irizarry, we heard from the ABA and we also heard from three distinguished members of the New York legal community. We heard from New York Supreme Court Justice Michael Pesce, the presiding justice, and New York Supreme Court Justice Lewis Douglass, as well as James Castro-Blanco, immediate past president of the Puerto Rico Bar Association. They praised her legal aptitude and experience, her integrity,

and, most notably, her judicial temperament.

Furthermore, the Committee received a number of letters in support of Judge Irizarry's nomination from those who were unable to attend her hearing, as well as a strong letter in support from the Congressional Hispanic Caucus.

When I look at the full record in this case, including the impressive testimony on behalf of Judge Irizarry from her judicial colleagues and former associates, the endorsements of the Brooklyn, Asian American and Puerto Rican Bar associations, and her own answers to the questions that have been raised, I am persuaded that she is prepared to be a fine Federal judge. I support her confirmation, and I ask my colleagues to do the same.

Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today, we are asked to consider the nomination of Dora Irizarry to the United States District Court for the Eastern District of New York. There was some controversy with her nomination stemming from interviews conducted by the American Bar Association. A majority of the ABA Standing Committee members concluded that Judge Irizarry was "not qualified" for the Federal bench. I believe we must give considerable weight to such peer reviews.

Unfortunately, Judge Irizarry is one of 28 judicial nominees of this President to receive a partial or majority rating of "not qualified" from the ABA committee that conducts a peer evaluation of judicial nominees. When the ABA advises us that even a minority of the members of its review committee consider a nominee to be "not qualified," that is cause for concern. I know that the ABA representatives take their work very seriously.

Last October, the Judiciary Committee held a hearing on the nomination of Judge Irizarry, with the consent of both of the Senators from her home state of New York. The senior Senator from New York, Senator SCHUMER, served as the ranking member at the hearing. On behalf of the Democratic minority, I worked with Chairman HATCH to allow that hearing to be scheduled on shorter notice than would normally be required under Senate rules. That was one of a series of accommodations Democrats have made to the Republican majority and to this administration without receiving acknowledgment or credit. At the hearing, the committee explored the nomination and the unfavorable recommendation of the ABA. We heard from the nominee, Judge Dora Irizarry, ABA representatives, and the witnesses speaking in support of her qualifications.

The Democratic members of the Judiciary Committee look very closely at the peer review ratings provided by the ABA. Nevertheless, we consider the views of the ABA an important but not a dispositive piece of information as part of our evaluation. We may not always agree with the recommendation.

The Senate proceeded to confirm nominees with majority "Not Qualified" ratings from the ABA, and during the course of this administration the Senate has confirmed a number of nominees with partial "Not Qualified" ratings.

There are other factors that are critical considerations for these lifetime positions in the Federal judiciary beyond a favorable ABA rating. For example, in the judgment of some Members of the Senate, some of this President's judicial nominees do not have records that demonstrate that they will be fair judges and, instead, their backgrounds suggest precisely the opposite: that they were chosen with the hope that they would prejudice areas of constitutional law in order to move the law in a certain direction in tune with the political views of the right wing of the Republican party.

I have no concerns about the impartiality of the ABA member, Pat Hynes, who conducted the interviews in connection with the nomination of Judge Irizarry. Ms. Hynes, who is of counsel at Milberg Weiss, chaired the ABA standing committee during the beginning of the Bush administration and also served as the ABA's Second Circuit representative from 1995 to 2000. She is currently Chair of the Merit Selection Panel for Magistrate Judges for the Southern District of New York and serves on the Second Circuit Court of Appeals Rules Committee. She was chosen as a Fellow of the American College of Trial Lawyers and has been named one of the Top 50 Women Litigators in the United States and one of the 50 Most Influential Women Lawyers in America.

The Senate Judiciary Committee's practice has been to invite the ABA's testimony in connection with a nomination when a circuit or district court nominee has earned a majority or unanimous rating of "not qualified." In providing such testimony, I know that the ABA takes pains to preserve the confidentiality of the attorneys and judges they interview as part of their review. I do wish the ABA would provide similar information, informally or formally, about other ratings they provide. Before President Bush ejected the ABA from the process of providing an informal rating before a nomination was made, the fact that temperament or ethics concerns were raised was conveyed, and sometimes past White Houses chose not to proceed after making further inquiry into such concerns. Additionally, when the ABA was involved in the process before nomination, I am confident that members of the legal community were more candid before a judicial candidate was given the imprimatur of the President.

I understand that in connection with the nomination of Judge Irizarry, the ABA heard a number of candid assessments from the lawyers and judges Ms. Hynes interviewed, some very positive and some troubling in the area of judicial temperament.

Judge Irizarry, who was born in Puerto Rico, is an attorney with the New York firm of Hoguet, Newman & Regal. A 1979 graduate of Columbia Law School, she was appointed to the Bronx County Criminal Court in 1996, and then served on the New York County Criminal Court, on the New York Supreme Court, which, despite its name, is a trial level court, in New York County and Kings County, and on the New York Court of Claims. She served as a judge until May 2002, when she resigned to run an unsuccessful campaign for State Attorney General against Eliot Spitzer. As I mentioned, based on concerns about temperament, a majority of the ABA committee found her to be "not qualified" for a Federal judgeship and a minority voted to find her "qualified." The New York City Bar Association's Judiciary Committee also found Judge Irizarry to be unqualified for a position on the Federal bench, citing a lack of Federal experience and complaints about her judicial temperament.

I have concerns about the serious temperament allegations that were made to the ABA standing committee but I trust the judgment of the senior Senator from the State of New York and I am prepared to support Judge Irizarry's confirmation to this lifetime position. I trust that she will conduct herself on the Federal bench in a way that is above reproach.

NOMINATION OF GEORGE SCHIAVELLI

Mr. HATCH. Mr. President, I am pleased today to speak in support of George P. Schiavelli to be United States District Judge for the Central District of California.

Judge Schiavelli has exceptional qualifications for the Federal bench. After graduating first in his class from UCLA Law School in 1974 he joined the law firm of O'Melveny & Myers LLP as an associate where he worked on litigation, labor, corporate and entertainment issues with an emphasis on commercial litigation. In 1976, Judge Schiavelli joined the litigation department of Ervin, Cohen & Jessup LLP. Ten years later, he was hired as a partner at Horvitz & Levy, LLP, an appellate law firm.

Judge Schiavelli began his distinguished career in public service by joining the Los Angeles Superior Court in 1994 where he served until 2000. Since that time, he has practiced principally in the area of alternative dispute resolution, ADR, acting as a mediator, arbitrator, referee, and special master. In addition to his ADR activities, Judge Schiavelli has been Of Counsel to the Appellate Group of Reed Smith LLP.

Judge Schiavelli's impressive credentials are reflected in his unanimous American Bar Association rating of Well Qualified. I urge my colleagues to join me in supporting his nomination.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of George Schiavelli to the U.S. District Court for the Central District of California. He is currently of counsel at

Reed Smith LLP in Los Angeles, where he has worked since 2000. Prior to joining Reed Smith, he served as a judge on the Los Angeles Superior Court from 1994-2000. He has significant litigation and judicial experience and I support his nomination.

Mr. Schiavelli's nomination is the product of a bipartisan judicial nominating commission maintained with the White House by Senators FEINSTEIN and BOXER. The State of California is well-served by its bipartisan judicial nominating commission, which recommends qualified, moderate nominees on whom members of both parties can agree. It is difficult to understand why President Bush has opposed similar bipartisan selections commissions since they clearly help Democrats and Republicans work together to staff an independent judiciary.

I thank Senators FEINSTEIN and BOXER for their steadfast efforts in maintaining the commission. It is a testament to their diligence that we have such well-qualified nominees heading to California's Federal courts. With this confirmation, the Senate will have confirmed 15 nominees to the district courts in California.

The Senate will now have confirmed more than two dozen judicial nominees of President Bush this year alone. Only 17 judges were confirmed under Republican leadership in the entire 1996 session and no circuit court nominees were confirmed that entire time. That was the last year in which a President was seeking reelection. We have far exceeded the number of judges confirmed, including circuit judges, that year.

With today's votes, the Senate will have confirmed nearly 200 judicial nominees of President Bush. In this Congress alone, the Senate has confirmed more Federal judges than were confirmed during the 2 full years of 1995 and 1996 when Republicans first controlled the Senate and President Clinton was in the White House. We have also exceeded the 2-year total at the end of the Clinton administration, when Republicans held the Senate majority in 1999 and 2000. I would note, however, that the Republican-controlled Senate has not confirmed in 25 months quite as many as the 100 the Democratic-led Senate confirmed in our 17 months in the majority in 2001 and 2002.

With nearly 200 confirmation of President Bush's judicial nominees, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in the most recent four-year presidential term—that of President Clinton from 1997 through 2000. We have confirmed more judicial nominees than the first President Bush appointed in his presidency and more than during President Reagan appointed during his entire term from 1981 through 1984.

I congratulate Mr. Schiavelli and his family on his confirmation today.

NOMINATION OF ROBERT B. HARWELL

Mr. HOLLINGS. Mr. President, I join LINDSEY GRAHAM in supporting Bryan

Harwell to be a Federal judge in the Low Country. I support nominees from both parties no matter who is President, but I don't believe this Nation's courts should be filled with judges who are advancing a political agenda. We need to stay above politicizing the courts for short-term political gain. I have been disturbed by a few of the President's nominees, who have been outside the judicial mainstream, or are only marginally qualified, or are tainted by conflicts or their past political work for Kenneth Starr. We should not use the Federal bench to reward our political operatives.

Bryan Harwell has distinguished himself as a trial lawyer with a law firm in Florence and Marion, representing individuals and small businesses in general civil, criminal, workers compensation and family court matters. In particular, he has developed expertise in torts and insurance, product liability, malpractice and other negligence cases. His Martindale-Hubbell Rating is AV, the highest possible rating. As a veteran, I appreciate Mr. Harwell's service for a number of years in South Carolina's Army National Guard, during which he rose to the rank of JAG Captain. He has also contributed to his community as a Trustee of the Florence Darlington Technical College and as a business law professor there. Bryan Harwell will be a fine Federal judge.

Mr. GRAHAM of South Carolina. Mr. President, I have had the pleasure of knowing Bryan Harwell for a very long time. I have always respected his character as well as his legal abilities. Upon hearing of Judge Houck's intention to take Senior Status, I immediately thought of Bryan. He has distinguished himself in private practice since 1984, serving as a pillar of the Florence, SC legal community. Everyone I've talked to about his nomination has been unanimous in their admiration for him and his family.

As most of you know, I have based my judicial recommendations to the President on character, ability, and temperament. Bryan Harwell fulfills all of these criteria with a large measure to spare. Indeed, he has displayed excellence in all of these categories for as long as I have known him. Upon graduation from the University of South Carolina School of Law, where he finished his degree in just over 2 years, Bryan clerked for one of our most respected state Circuit Judges, Rodney Peeples. Finishing his clerkship with Judge Peeples, he then went on to clerk for one of our most accomplished Federal judges, U.S. District Judge G. Ross Anderson. Both have had high praise for Bryan's time in their service.

After his clerkships, Bryan entered private practice with the law firm of Harwell, Ballenger, Barth & Hoefer, where he currently practices. His practice has involved the complete spectrum of South Carolina's laws and he has argued cases before our State Su-

preme Court as well as the Fourth Circuit Court of Appeals. He has augmented his litigation practice with a thriving mediation and arbitration practice, an area I personally believe has great promise for addressing a number of our legal system's problems. Last, but certainly not least, he has served his country as a Judge Advocate General officer in the South Carolina National Guard.

In short, like many lawyers in South Carolina, he has represented the working man and the small businessman and he has served his country as well. I have a tremendous amount of respect for that type of lawyer, having been one myself.

While he has excelled in private practice, Mr. Harwell has also shown his deep commitment to his community. He has opened his practice to those who are less fortunate and who need a helping hand by serving as a referral attorney for Carolina Regional Legal Services. He has served as an adjunct business law instructor at Francis Marion University. Bryan has participated in the South Carolina Bar's Ask-a-Lawyer project, an important link between our legal community and our citizens, which often serves as the only opportunity many of our citizens have for knowledgeable advice regarding some of life's most important matters. And, reflecting his varied interests, he has also served on the Board of Trustees at Florence Darlington Technical College.

Bryan Harwell has also gone out of his way to serve South Carolina's legal community. He has served as a lecturer on arbitration and mediation law on a number of occasions for our South Carolina Bar.

In recognition of his accomplishments and service, I am proud that Mr. Harwell received a unanimous "Qualified" rating from the American Bar Association. I am certain that he will be an excellent addition to the Federal bench.

I am pleased that the Senate has voted to confirm Mr. Harwell today.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Robert Harwell, who has been nominated to the U.S. District Court for the District of South Carolina.

Mr. Harwell is an exceptional nominee. A graduate of the University of South Carolina School of Law, he brings more than 20 years of legal experience to the Federal bench. After graduation, he clerked consecutively for South Carolina Circuit Judge Rodney A. Peeples and U.S. District, South Carolina, Judge G. Ross Anderson, Jr.

Let me just say that Mr. Harwell, like my distinguished colleague from South Carolina, Senator LINDSEY GRAHAM, has served as judge advocate general in the South Carolina Army National Guard. I note that Senator GRAHAM served in the Air National Guard.

After his clerkships, Mr. Harwell entered private practice with the law

firm of Harwell, Ballenger & DeBerry, now known as Harwell, Ballenger, Barth & Hoefer, LLP, where he currently practices. In addition to practicing law, he often serves as a mediator or arbitrator, skills that will undoubtedly serve him well on the bench.

I think my colleagues will agree that Mr. Harwell is a well-qualified nominee and will make a fine jurist.

Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today we vote on the nomination of Robert Harwell to the U.S. District Court for the District of South Carolina. Mr. Harwell is the name partner of a litigation firm in South Carolina, Harwell, Ballenger, Barth & Hoefer, LLP, where he has practiced law since 1984. He has significant litigation experience, and I support his nomination.

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With nearly 200 confirmation of President Bush's judicial nominees, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in the most recent four-year presidential term—that of President Clinton from 1997 through 2000. We have confirmed more judicial nominees than his father got confirmed and than during President Reagan's entire term from 1981 through 1984. Republicans should stop their false claims of obstructionism given these broken records.

With this confirmation, we have filled every vacant seat in South Carolina. It is a pleasure working with both of the Senators from South Carolina. I congratulate Mr. Harwell on his confirmation.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nominations, en bloc?

The nominations were agreed to en bloc.

The PRESIDING OFFICER. The motions to reconsider are laid upon the table, and the President will be notified of the foregoing Senate action.